



State of New York
STATE BOARD OF ELECTIONS

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February 1, 2012

Hon. Gary L. Sharpe
United States District Court
for the Northern District of New York
James T. Foley United States Courthouse
445 Broadway, Room 441
Albany, New York 12207

Re: United States v. State of New York, et. al
Civil Action No. 10-CV-1214 (GLS)

Dear Judge Sharpe:

I am filing this response on behalf of New York State Board of Elections Commissioners James A. Walsh, Gregory P. Peterson and Co-Executive Director Todd D. Valentine.

This Court's order of January 27, 2012, requires, in pertinent part, that the NYSBOE shall "provide the court with a proposed non-presidential federal primary election calendar for all statutory and administrative election-related deadlines based upon the non-presidential federal primary election date set by the court."

The staff at NYSBOE and its Commisisoners have had extensive meetings and conversations concerning the meaning of the Courts directive. Unfortunately, we cannot agree on the same and are therefore left to file separate responses based upon our understanding of the same.

It is our position that the Court is hereby requiring that the NYSBOE insert that June 26, 2012 date into the current statuorty framework and illustrate for the Court what the effect of that date will be as it is applied to the election calendar. We respectfully submit that we have not interpreted that order to mean that in promulgating said calendar that you are either requiring or expecting the NYSBOE to make wholesale changes to those statutes in an effort to cure any possible infirmities therein.

While it is anticipated that some members of the Board feel that the crafting of a legislative or judicially ordered remedy is what is being sought, ANY of the potential issues that we have highlighted could be resolved in a myraiad of different ways, and a ministerial body such as the NYSBOE should not be proposing a singular remedy for any or all of them not directly related to the 45 day mailing deadline or the

certification of the ballot to be mailed. It would be an unprecedented event for the NYSBOE to implement a calendar deviating from the statutorily required timeframes without prior legislative action.

As we have all conceded, the New York State Election Law is a complex body of intertwining statutes and dates. The vast majority of these events are statutorily determined by the insertion of the date itself and will not require any additional judicial or legislative alteration. Specifically, most of the election related activity is statutorily mandated in terms of a period of time before the election and they will "automatically" adjust based upon the new date. Unfortunately, the timing constraints of this year have caused even the most automatic of adjustments to become suspect and it is our position that any "best guess" at solutions being made in a vacuum are at best premature and ultimately could be just flat out unworkable.

This is particularly true in light of the only known fact about congressional redistricting thus far is that New York State will be losing two congressional districts and the boundaries of those remaining will all be altered. The "newly created" boundaries of the congressional lines now being drafted have not been released in even a draft format. Once those congressional lines have been drafted, enacted and pre-cleared by the Department of Justice, there will still be some significant amount of time required for the county boards of election to do the election work necessary to configure those new districts and create the list of enrolled voters in each district which is required for the petition process to commence. Without such lists, it cannot be determined which voters can legally sign which petitions being circulated for ballot access.

Many, if not all of the statutory changes that might be suggested today to remedy infirmities within the currently timed calendar, may very well have to be redone or revised based upon the actual completion of the redistricting process. In the same vein, should the redistricting process be completed in the near future, many of the suggested changes would not be required at all. Unfortunately, the completion of the redistricting process is a necessarily a threshold issue that must be resolved before any meaningful statutory alteration can begin.

As directed, we are attaching a calendar for the court showing what effect the insertion of a June 26, 2012 primary date has upon it. On the calendar we have identified those events that we are suggesting be altered pursuant to the court order with a "CO". We believe that the entire Board is in agreement on those items to be marked and modified as such. Marked as "WP-PI" are those potential issues identified by Comomissioners Walsh and Peterson that may require judicial or legislative action.

As always, we stand ready to assist the Court and the parties in any way that we can.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kimberly A. Galvin', written over a horizontal line.

Kimberly A. Galvin
Special Counsel
Bar Roll No. 505011

TABLE OF POLITICAL CALENDAR EVENTS ADJUSTED TO COMPLY WITH COURT ORDER IMPLEMENTING THE MOVE ACT

The Federal MOVE Act requires military and special federal ballots to be sent out 45 days prior to an election for federal office. Here's a summary of the key changes.

The following table shows the events that occur in the political calendar grouped by topic. The left hand column indicates the sections of law that would need to be superseded in order to comply with the Court Order to send out the military ballots by the 45th day before both the federal primary and the general election.

The table also applies the statutory rule of moving filing dates if the last day for filing shall fall on a Saturday, Sunday or legal holiday, the next business day shall become the last day for filing. Election Law §1-106

Summary of Current Statutory Text ("CO" for changes to comply with Court Order) ("WP-PI" for Potential Issues the Court should be advised of) (impacted dates in bold)		SECTION OF LAW	Date	Comments
Certification of Federal Primary Election				
CO-1	Certification of Federal Primary ballot by SBOE of designations filed in its office – 54 days before federal primary.	§ 4-110	5/3/12	
CO-2	Determination of candidates for federal office; CBOEs – 53 days before federal primary.	§ 4-114	5/4/12	
Federal Primary Election				
	Non-Presidential Federal Primary	Court Order	6/26/12	
	Canvass of Primary Returns by County Board of Elections	§9-200(1)	7/5/12	
	Recanvass of Primary Returns	§9-208(1)	7/11/12	
	Verifiable Audit of Voting Systems	§9-211(1)	7/3/12	
	Verifiable Audit of Voting Systems	§9-211(1)	9/18/12	
Certification of General Election				
	Certification of offices to be filled at General Election	§4-106(1)(2)	3/6/12	
	Vacancies to be filled at General Election	§6-158(14) Pub Off§42(1)	9/19/12	
CO-3	Certification of General Election ballot by SBOE of federal nominations filed in its office - 54 days before General Election.	§ 4-112 (1)	9/13/12	
CO-4	Determination of federal candidates by CBOEs – 53 days before General Election	§ 4-114	9/14/12	
General Election				
	General Election	§ 8-100 (1)(c)	11/6/12	

Party Designations				
Designating Petitions for the Non-Presidential Federal Primary				
	First day for signing designating petitions.	§ 6-134 (4)	3/20/12	
	Dates for filing designating petitions for primary.	§ 6-158 (1)	4/23/12-4/26/12	
	Last day to authorize designations.	§ 6-120 (3)	4/30/12	
	Last day to accept/decline a designation.	§ 6-158 (2)	4/30/12	
WP-PI-1	Last day to fill vacancy after declination	§ 6-158 (3)	5/4/12	Occurs after the 5/3/12 date for the SBOE to certify the ballot.
WP-PI-2	Last day to file authorization of substitution after a declination.	§ 6-120 (3)	5/8/12	Occurs after the 5/3/12 date for the SBOE to certify the ballot.
Opportunity to Ballot Petitions for the Federal Primary				
	First day for signing.	§ 6-164	3/29/12	
	Last day to file petitions.	§ 6-158 (4)	5/1/12	
WP-PI-3	Last day to file an OTB petition if there has been a declination by a designated candidate.	§ 6-158 (4)	5/10/12	Occurs after the 5/3/12 date for the SBOE to certify the ballot.
Party Nominations Other than Primary for Federal Office				
	Dates for holding state committee meeting to nominate candidates for [federal]statewide office	§6-104(6)	2/28/12-3/20/12	
WP-PI-4	Last day for filing nominations of electors for president by a party committee.	§ 6-158 (6)	9/25/12	Occurs after the 9/13/12 date for the SBOE to certify the ballot.
	Last day to file certificates of nomination to fill vacancies created pursuant to § 6-116.	§ 6-116	7/3/12	
	Last day to accept or decline a nomination.	§ 6-158 (7)	7/6/12	
	Last day to file authorization of nomination.	§ 6-120 (3)	7/9/12	
	Last day to fill a vacancy after a declination.	§ 6-158 (8)	7/10/12	

VOTER REGISTRATION				
Federal Primary Election				
	Mail registration: Last day to postmark application and last day it must be received by board of elections.	§ 5-210 (3)	6/1/12-6/6/12	
	In person registration: Last day application must be received by board of elections to be eligible to vote in primary election.	§§ 5-210, 5-211, 5-212	6/1/12	
	Change of Address	§ 5-208 (3)	6/6/12	
VOTING BY ABSENTEE BALLOT				
For Federal Primary				
	Last day to postmark application for ballot.	§8-400(2)(c)	6/19/12	
	Last day to apply in person for a ballot.	§8-400(2)(c)	6/25/12	
	Last day to postmark ballot and date it must be received by the board of elections.	§8-412(1)	6/25/12-7/3/12	
	Last day to deliver ballot in person to the county board.	§8-412(1)	6/26/12	
Military/Special Federal (UOCAVA) Voters for federal Primary				
	Last day for a BOE to receive application for ballot if not previously registered.	§ 10-106(5) §11-202	6/1/12	
	Last day for a BOE to receive application if previously registered.	§ 10-106(5) §11-204(4)	6/19/12	
	Last day to apply personally if previously registered.	§ 10-106(5)	6/25/12	
CO-5	Date to send out Military/Special Federal ballots.	§ 10-108(1) §11-204(4)	<u>5/12/12</u> <u>(45 days)</u>	
	Last day to post mark Military/Special Federal ballot and date it must be received by the board of elections	§ 10-114(1) §11-212	6/25/12-7/3/12	
	Last day to post mark Military ballot and date it must be received by the board of elections	§ 10-114(1)	9/10/12 – 9/18/12	

Military/Special Federal (UOCAVA) Voters for General				
	Last day for a BOE to receive application for ballot if not previously registered.	§ 10-106(5)	10/27/12	
	Last day for a BOE to receive application for ballot	§ 11-202(1)(b)(c)	10/30/12	
	Last day for a BOE to receive application if previously registered.	§ 10-106(5) §11-204(4)	10/30/12	
	Last day to apply personally if previously registered.	§ 10-106(5)	11/6/12	
CO-6	First day to mail ballot to Military/Special Federal voter	§ 10-108(1) §11-204(4)	9/21/12	Transmit Ballot for federal office 9/21/12 (45 days SAT 9/22/12). However, a second ballot with only state/local offices/propositions would need to be transmitted ONLY to Military voters thereafter who previously received only federal ballot. Late Military applicants would receive ballot(s) for both federal and state/local/props.
	Last day to postmark Military/Special Federal ballot and date it must be received by the board of elections	§10-114(1) §11-212	11/5/12 11/19/12	